



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP

Docket No. 7313-00

16 January 2001

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, applied to this Board requesting, in effect, that the record be corrected to show he was advanced to AT3 (E-4).

2. The Board, consisting of Messrs. Morgan, Caron, and Ms. Madison reviewed Petitioner's allegations of error and injustice on 10 January 2001 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner's application to the Board was filed in a timely manner.

c. Petitioner enlisted in the Navy on 12 June 1997 for four years at age 18. He was advanced to ATAN (E-3) on 1 March 1998 and was selected for advancement to AT3 (E-4) on 6 December

1999. He was subsequently frocked to the higher rate, and would have been advanced on 16 March 2000. The limiting date on the advancement was 30 June 2000.

d. On 29 February 2000, Petitioner received nonjudicial punishment (NJP) for failure to obey a lawful order of the commanding officer (CO) to submit to an anthrax inoculation. Punishment imposed consisted of one-half of one months pay per month for two months, reduction in rate to ATAA (E-2), and 45 days of restriction and extra duty. Petitioner appealed the NJP as being unjust. He stated that he declined to be vaccinated because he feared that it was not safe. Further, he claimed he was not deploying to a chemical-weapons area again until the squadron went to WestPac in June 2001. At that time, his current enlistment would have expired, and he was not sure if he would still be in the Navy. His appeal was denied on 14 March 2000.

e. On 12 July 2000, the successor NJP authority set aside the reduction in rate imposed at NJP on 29 February 2000 and stated that he did not believe the punishment was justified. The command was able to reinstate Petitioner to ATAN, but was unable to promote him to AT3. The CO further stated that he did not believe Petitioner should have been punished for refusing to be vaccinated for anthrax when the squadron was not deployable and was not scheduled to deploy for more than 19 months. The CO now recommends his advancement to AT3.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board notes the CO set aside only that portion of the NJP which imposed a reduction in rate, but could have set aside the NJP entirely, an option he can still exercise. The Board was aware of the controversy that occurred with the administering of anthrax vaccinations. The Board concurs with the CO that under the specific facts of this case, the reduction in rate was unjust. Further, the only reason Petitioner could not have been advanced by the command was because the set aside action occurred after the limiting date for advancement. Accordingly, the Board concludes that it would be appropriate and just to correct the record to show that Petitioner was advanced to AT3 in a timely manner.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show he was advanced to AT3 on 16 March 2000.

b. That a copy of this Report of Proceeding be filed in Petitioner's naval record.

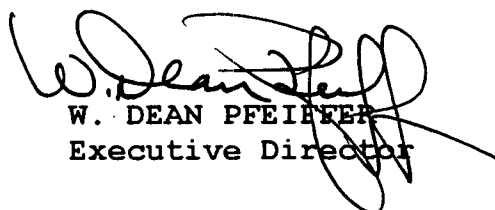
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director